

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

THE COLEMAN COMPANY,

Plaintiff/Counterclaim
Defendant,

v.

TEAM WORLDWIDE CORPORATION,

Defendant/Counterclaim
Plaintiff,

And

CHENG-CHUNG WANG,

Counterclaim
Plaintiff,

CIVIL ACTION NO.
2:20cv351

TRANSCRIPT OF PROCEEDINGS

(Motion hearing via Zoom)

Norfolk, Virginia

March 15, 2022

BEFORE: THE HONORABLE ROBERT G. DOUMAR
United States District Judge

1 APPEARANCES:

2 CHRISTAIN & BARTON LLP

3 By: David B. Lacy

And

4 MEUNIER CARLIN & CURFMAN LLC

5 By: Lee G. Hamilton

Warren J. Thomas

Counsel for The Coleman Company

6 KALEO LEGAL

7 By: William R. Poynter

And

8 RUYAK CHERIAN LLP

9 By: James M. Woods

Robert Harkins

10 Counsel for Team Worldwide Corporation and
Cheng-Chung Wang

1 (Hearing commenced at 10:00 a.m.)

2 THE CLERK: Civil action number 2:20cv351, The
3 Coleman Company, Inc., versus Team Worldwide Corporation.

4 For the plaintiff, Mr. Lacy, Mr. Thomas,
5 Mr. Hamilton, are you ready to proceed?

6 MR. THOMAS: Yes, Your Honor.

7 Yes, ma'am.

8 THE CLERK: Mr. Poynter, are you, Mr. Harkins and
9 Mr. Woods ready to proceed for defendants?

10 MR. POYNTER: We are. Thank you.

11 THE COURT: Who's going to argue the matter? There
12 are two matters, actually.

13 MR. LACY: Your Honor, this is David Lacy with
14 Coleman. My colleague, Mr. Thomas, will argue the
15 magistrate objection, and Mr. Hamilton will argue TWW's
16 motion to re-open discovery.

17 THE COURT: Okay.

18 MR. POYNTER: Judge Doumar, this is Bill Poynter
19 for the Defendant Team Worldwide, and Mr. Robert Harkins is
20 going to argue both motions for the defendant.

21 THE COURT: All right. So Mr. Harkins versus
22 Thomas.

23 MR. HARKINS: I'm taking all coverage, Your Honor.

24 THE COURT: So we will start with my biggest
25 problem, is the question of the testimony of Stevick. It is

1 obvious that there are problems with Stevick's testimony, as
2 far as I'm concerned. However, under these court general
3 orders, non-dispositive motions, which generally such a
4 motion would be for a motion *in limine*, would normally be
5 non-dispositive. In this case it goes to the very heart of
6 the case, so it creates a monstrous problem because it does
7 go to the heart of the case.

8 Consequently, Judge Leonard has ruled on it, and we
9 will see where we go from there. I think it's a most
10 important thing. So insofar as that is concerned, the
11 plaintiff seeks to overrule Judge Leonard. Plaintiff, how
12 much time do you want to argue that point?

13 MR. THOMAS: Your Honor, I think 10 or -- 10
14 minutes, 15 minutes would be sufficient, including a
15 rebuttal.

16 THE COURT: I'll give you 15 minutes, 10 minutes to
17 start and 5 minutes for rebuttal.

18 MR. THOMAS: Thank you, Your Honor.

19 THE COURT: So far as the defendant is concerned,
20 how much time do you want?

21 MR. HARKINS: 15 minutes would be fine, Your Honor.
22 Thank you.

23 THE COURT: 15 minutes for you. All right. We
24 will go from there.

25 Okay. Let's get started.

1 MR. THOMAS: Your Honor, I apologize. I'm
2 having -- can you see me and hear me just fine? I assume
3 you can hear me.

4 THE COURT: I'm having a little trouble hearing,
5 but other than that, I'm in good shape.

6 MR. THOMAS: All right. Is it any better now, Your
7 Honor?

8 THE COURT: Yes, a little better now. You got the
9 microphone close, I can hear better. Go ahead.

10 MR. THOMAS: Thank you. So, Your Honor, as you
11 know, Coleman's position is that the testimony from
12 Dr. Stevick does not have or show a valid scientific
13 connection between what he says occurs, which is a purported
14 pressure change, and then the claims requirements that the
15 structure of the Coleman beds actually act as a suction cup
16 when a person moves onto them. And the Magistrate Judge's
17 order contains legal and factual errors that justify
18 overruling it.

19 So the Court's order on summary judgment held that
20 the air bed must act as a suction cup to infringe, and the
21 order also concluded that the requirement that the bed act
22 as a suction cup is an integral part of the invention, and
23 that it defines the structure and portions of the mattress.

24 And, of course, the Court noted at the time that
25 Coleman challenged Dr. Stevick's assumptions but had

1 previously lost its *Daubert* challenge, and we believe that
2 the papers we've submitted show that the Magistrate Judge's
3 order was in error.

4 Dr. Stevick's report didn't address how the bed was
5 fixed to the surface, just as much as it doesn't address how
6 the bed acts as a suction cup. At the most he does, you
7 know, assuming -- if we give some sort of deference, if we
8 were to -- what he says, he says that there is a momentary
9 unquantified pressure change in a small space underneath the
10 bed that is related to airflow, and Stevick, as we pointed
11 out in our opening brief, he admitted that the manometer
12 doesn't actually show airflow. That's an assumption he
13 makes.

14 TWW's opposition brief says that there is no
15 inferences that he's actually making here. He did a test
16 that shows infringement, but that's just facially not true.
17 He has to go from the measurement of the pressure change,
18 which, as we do concede, you know, a manometer reading could
19 be a scientifically valid test for measuring pressure, but
20 from that he makes an inference or a leap that there is
21 airflow, which the Magistrate Judge said that was a
22 scientific certainty that that had to occur, even though
23 that scientific certainty language was certainly not
24 anywhere in the record, and we've shown that there is
25 evidence that there is -- it can be that it doesn't, and

1 Dr. Stevick admitted that it doesn't have to necessarily
2 occur.

3 And then from the idea of airflow, then he says,
4 well, then there must be a suction that occurs, and that's
5 just not -- that's too many leaps. That connection is too
6 attenuated from the principal observation to be able to show
7 infringement. And his opinion, you know, even on the
8 pressure change or the opinion that the pressure change is
9 due to airflow, is, in his opinion, that is sufficient to
10 create some unknown amount of suction or force.

11 And so one says, well, how can he know it's enough,
12 that's enough force to act as a suction cup, much less fix
13 the mattress to a support surface? His scientific test
14 didn't test it, and the problem is that he can't. It's pure
15 speculation.

16 So allowing him to testify as an expert that in his
17 scientific opinion there is pressure difference, and that
18 there is pressure, leap-leap to then, therefore, the product
19 infringes, that is no different than having a layperson say
20 I think it's there.

21 And to put the imprimatur of an expert opinion is
22 improper on that opinion under *Daubert*, and it's certainly
23 not helpful to the jury because Dr. Stevick's opinions don't
24 aid the jury in answering the ultimate factual question,
25 which is whether the bed acts as a suction cup.

1 And as we argued in our opening brief, the TWW's
2 arguments that it presented at the summary judgment hearing
3 actually illustrate just how far Dr. Stevick's opinions
4 stray from science into conclusory speculation. Counsel had
5 argued, well, if he can detect any change in pressure
6 whatsoever, that is going to be sufficient to act as a
7 suction cup.

8 THE COURT: That's an indication of the testimony.
9 Any change whatsoever, doesn't make any difference how much
10 of a change it is, if it's one-one-hundred-thousandth of a
11 change, sufficient, according to Stevick; is that correct?

12 MR. THOMAS: That's correct. In his testimony --

13 THE COURT: I assume the other side maintains that
14 there is a measurable amount of pressure change, the
15 measurable amount of pressure change to justify the opinion
16 of the Magistrate Judge in this case?

17 MR. THOMAS: I believe that's correct, Your Honor,
18 yes. And Dr. Stevick's testimony was, as we cited in our
19 objections, and I believe it was in his deposition
20 testimony, was that as long as there was a, quote, finite
21 distance, that is, quote, greater than zero, then that would
22 be sufficient to show that the bed acts as a suction cup.
23 As long as it's something that's detectable, Mr. Harkins
24 said at the hearing, as long as it was -- that he said, I
25 think -- I have it written somewhere, but at some point he

1 said that you might get, quote, so small, you would not be
2 able to detect it, end quote. That was at the transcript
3 Pages 43 and 44.

4 But that is the line that TWW supposes, and
5 Dr. Stevick's opinion supposes, that the only line between
6 infringing and non-infringing is that the pressure change is
7 so small you can't detect it, and that's not a reliable
8 principle based on science. That's speculation. It is
9 speculation to say that, well, this fuzzy line, wherever it
10 is, that's so small you can't detect the pressure change.
11 Well, at that point, and only at that point, you would not
12 act as a suction cup.

13 According to Dr. Stevick, anything greater or above
14 that line is going to act as a suction cup, according to the
15 patent, and that's just nothing, that's meaningless, and the
16 Court must act as a gatekeeper to exclude that kind of
17 speculated and unsupported opinion. It's unverifiable.

18 THE COURT: But I have a problem, Mr. Thomas, that
19 I have to find in this case, is that the Magistrate Judge,
20 his opinion was clearly erroneous. How can I do that?

21 MR. THOMAS: Well, Your Honor, I think there's a
22 couple of ways to do that. Number one is that the standard
23 is that this Court is left with the definite and firm
24 conviction that a mistake has been committed. That is in
25 your discretion as to whether a mistaken has been committed,

1 and if you're not firmly convinced that such an error has
2 occurred, then you must affirm the Magistrate Judge's order.

3 But if you are convinced that an error has
4 occurred, if you are convinced, as we believe you should be,
5 that this line that TWW and Dr. Stevick have drawn is so
6 tenuous and attenuated, then you should overturn the
7 Magistrate Judge's order.

8 The other aspect and part of the standard that
9 permits reversal of the Magistrate Judge's order is if it's
10 contrary to law because it failed to apply or misapplied
11 case law or procedural rules. And we believe that it has
12 done so in this case because the rulings are not
13 sufficiently connected to -- or, sorry, we believe we have
14 shown that Dr. Stevick's opinions are not the product of
15 reliable principles and methodology as required by *Daubert*
16 and the other cases we've cited in our briefs.

17 In addition to the factual, the clear factual
18 errors that we identified in our objections and reply
19 related to Magistrate Judge's conclusion that it was a
20 scientific certainty that the air must flow, that the air
21 has to flow underneath the air bed, and we've shown that
22 that is simply not true, it is not supported by the record,
23 and it's contradicted by standard science, in addition to
24 Dr. Stevick's testimony.

25 THE COURT: Thank you, Mr. Thomas.

1 All right. Now we will see what the defendant has
2 to say.

3 MR. HARKINS: Thank you, Your Honor. Robert
4 Harkins for Team Worldwide, and I have a set of slides that
5 I'd like to present and some pictures that I think will help
6 because I really truly believe that Mr. Thomas's
7 presentation is missing some very key information about
8 Dr. Stevick's test, and let me -- we will share the slides
9 with you.

10 THE COURT: So we do have a video of the test, do
11 we not?

12 MR. HARKINS: We do, Your Honor. I have a picture
13 trying to describe a little bit about the test.

14 THE COURT: As I reviewed that video, it gives me
15 real concern. I take it you don't want to deal with that;
16 is that correct?

17 MR. HARKINS: No, Your Honor. I think that -- I
18 just wanted to describe. I just don't have the video to
19 play at this moment. I'd be glad to talk about it, and it
20 described why it does show a suction. So if you don't mind,
21 Your Honor, can you see the slides on the screen right now?

22 THE COURT: What I can see on the screen is Team
23 Worldwide's presentation in opposition to The Coleman
24 Company.

25 MR. HARKINS: Okay.

1 THE COURT: That's all.

2 MR. HARKINS: Thank you, Your Honor.

3 THE COURT: TWW's technical expert.

4 MR. HARKINS: Right.

5 THE COURT: Now, we are going to deal with the
6 manometer testing demonstrating the situation. Okay. Let's
7 deal with it.

8 MR. HARKINS: Okay. I had some other slides, but
9 your monitor is already -- demonstrated the test is a very
10 high test to overturn this. Dr. Stevick is -- he did a
11 hands-on test. He's a Ph.D. who runs a lab where he does
12 hands-on testing, and this is the test that he ran.

13 What we are going to show you is that this -- and
14 I'm just going to skip through these for time. What we are
15 going to show you is that the test that -- this manometer
16 test actually shows a suction. That is what the test shows
17 definitionally. And all of the complaints that Mr. Thomas
18 has raised, they go to the weight of the testimony. He can
19 cross-examine Dr. Stevick at trial.

20 If it's very weak testimony, then presumably he
21 will succeed in front of the jury, but it doesn't go to the
22 admissibility of the test. Dr. Stevick ran a test. It does
23 show readings on a device that shows air moving under the
24 bed, and I want to explain that.

25 THE COURT: Let's look at what that does show. It

1 does do a little ping. So any movement whatsoever, you say,
2 creates suction, is what he says is the scientific evidence
3 in this case, correct?

4 MR. HARKINS: If the air --

5 THE COURT: No matter what happens, you don't have
6 to worry about the force that would be necessary to get the
7 air out. In other words, if I had a chair, and I sat in a
8 chair, then the chair does not have any friction to the
9 stable portion upon which the chair rests, so, therefore,
10 you don't have to have any pressure to move the chair,
11 correct? That's a new science, is it?

12 MR. HARKINS: About the chair? I'm not sure I
13 follow Your Honor about the chair.

14 THE COURT: What I'm saying is I'm sitting in a
15 chair, right.

16 MR. HARKINS: Yeah.

17 THE COURT: If I want to move this chair --

18 MR. HARKINS: Right.

19 THE COURT: -- I have to have some means of force
20 to move the chair, correct?

21 MR. HARKINS: Correct. But that has nothing to do
22 with suction. Whether you have force to move a chair or
23 not --

24 THE COURT: It has a lot to do with air escaping
25 underneath of this. What is odd is we have what I consider

1 the rectangle, that is a rounded rectangle. The bottom of
2 it is rounded, and it's a rectangle, and the air has to go
3 out under that --

4 MR. HARKINS: Right, Your Honor. So that's what --
5 just wait. I've highlighted on the screen is that just
6 definitionally suction is the act or process of removing the
7 air from a space.

8 THE COURT: In order for there to be a suction --

9 MR. HARKINS: Right.

10 THE COURT: -- air has to leave the mattress,
11 correct?

12 MR. HARKINS: That's right. But this is --

13 THE COURT: So how much pressure does it take the
14 air to leave the mattress? As I understand from the
15 testimony of Dr. Stevick, you don't have to have any
16 pressure, correct?

17 MR. HARKINS: If it -- that's not correct, Your
18 Honor.

19 THE COURT: No matter how much pressure it is,
20 there is no monumental amount of pressure. If it's
21 one-one-thousandth of a manometer, then that is more than
22 sufficient to cause the air to leave the mattress and
23 thereby create a vacuum; is that correct?

24 MR. HARKINS: I don't know about the
25 one-one-thousandth. It has to be a noticeable change on the

1 manometer, and I'd like to explain, Your Honor.

2 THE COURT: Where does he say it has to be a
3 noticeable change?

4 MR. HARKINS: He says he detected a noticeable
5 change in all tests. That's what he could find, that there
6 was a movement that you can clearly see.

7 THE COURT: So it is noticeable that the little
8 thing goes up and down a little bit, but it doesn't really
9 change. That's what disturbed me.

10 MR. HARKINS: Your Honor, can I just please have
11 five minutes to explain that?

12 THE COURT: You can have all the time you need.
13 I'll give you half an hour, because I have lots of problems.
14 I'm going to name about five of them right now. One, where
15 do you place a hundred pounds, 150 pounds? The question is
16 an individual is generally between, generally I say, 5 feet
17 tall to 7 feet tall. Most people are in that range. Isn't
18 any question as how wide they are.

19 The question is the weight that was attached, is
20 nothing to say how wide the weight is, how long it was, or
21 anything else in this thing, just that we put a load of 150
22 pounds. Where you put it is not mentioned in here at all.

23 There is a question of Boyle's law, which is
24 totally ignored. It doesn't apply. Why doesn't Boyle's law
25 apply? I don't understand. It indicates if you press the

1 air down, the pressure changes, but that doesn't mean the
2 air is gone. It only means the pressure changes, under
3 Boyle's law. Am I confused as to Boyle's law?

4 MR. HARKINS: Your Honor, I don't know if you're
5 confused as to Boyle's law, but what I can tell you is there
6 is not just one reading on the manometer, and that's why I
7 want to explain what the manometer test does.

8 THE COURT: Okay. So where in his report do we
9 refer to any of this? Just tell me. I'll be glad -- I'm
10 looking at his report right now. So you tell me where, and
11 I'll be glad to consider it.

12 I'm very concerned about it, but you're quite
13 correct that the question is he maintains that any change in
14 pressure, no matter how small, high or low, it indicates air
15 will have left and creates a suction, correct?

16 MR. HARKINS: He -- yes, because the test -- the
17 claim does not require -- it does not specify an amount of
18 suction, so that is not what the claim says. The claim says
19 you create a suction. So the test that he did was to test
20 whether there was evidence that we put a load on the bed, it
21 creates a suction, and that's the test he did. And the test
22 does show that.

23 And so, Your Honor, so because -- if the claim had
24 said you had to have a suction of a certain amount, then
25 that would be a different matter. It just says you have to

1 have a suction. So he did a qualitative test that says, I
2 can see -- it's quantitative on the manometer, you can see
3 the amount that it goes up or down, but there is not a said
4 amount in the claim. So what he needs to say is, is there a
5 noticeable amount on the manometer that shows that what
6 happens, and does that show that a suction is created? And
7 it does. I just -- so, Your Honor, I've got a picture,
8 okay, on the screen right now.

9 THE COURT: Okay.

10 MR. HARKINS: And this is the structure of the bed
11 that has been accused, and you have to -- you know, an air
12 bed is a balloon. So this is not a heavyweight item. This
13 is a balloon structure that has a main chamber, and then
14 it's got, I know it looks like two bumps on the floor, but
15 that's a ring that goes around the bottom of the bed. Okay.
16 And I'm actually going to -- just one second, I'm going to
17 show you. You can see the ring, this outer ring in the
18 actual bed.

19 THE COURT: That outer ring is what is interesting
20 because it's round and it's unquestionably, appears to be
21 higher than the inner ring or inner portion.

22 MR. HARKINS: Right, and that's the point. That's
23 why there is space -- so if you just put a balloon that has
24 that outer ring on the floor, that's the concavity. There
25 will be space trapped under that ring.

1 THE COURT: All right. When you push, put a weight
2 on that, doesn't that widen the bottom?

3 MR. HARKINS: Yes, Your Honor. This is how it does
4 it. The way it does is it's pushing -- you put the weight
5 onto the bed. That creates pressure that pushes the air out
6 from under the bed, which is a balloon.

7 THE COURT: Right. Well, unfortunately, you have a
8 picture of an individual all the way on the bed so that
9 the --

10 MR. HARKINS: That's the test he ran, was 150
11 pounds just put onto the bed and what happened.

12 THE COURT: The test he ran was not the test of an
13 individual, as you picture here. It was a weight put on the
14 bed. There is no definition of the weight whatsoever or
15 where it was put, is there? I could not find it in
16 Dr. Stevick's report.

17 MR. HARKINS: He put -- yeah, the way it wasn't
18 put -- I mean, it was put in the general middle part of the
19 bed. Both sides did the same thing, Your Honor.

20 THE COURT: I didn't ask you what both sides did
21 because I'm not interested in both sides at this moment.
22 I'm interested in this particular mattress at this
23 particular test in the showing of this test.

24 MR. HARKINS: Yes.

25 THE COURT: So we've got to stay on this one. I

1 realize that, unfortunately, a lot of people make a lot of
2 tests. What happens with experts, we rely on experts
3 generally to sustain our positions. We don't hire experts
4 who do not sustain our positions.

5 MR. HARKINS: Well, Your Honor, I would take a
6 little bit of issue with that in this case because he ran
7 the test on beds that did not test suction, and we did not
8 accuse those beds of infringing. So that's -- actually, in
9 this instance, Your Honor, I think that's not correct.

10 Dr. Stevick had some beds where he found there
11 wasn't air trapped under the bed, and he would not get a
12 manometer reading that would show that there was suction,
13 and we did not accuse those beds. We only accused beds
14 where we had this testing that showed that there was
15 suction. There are many, many beds not accused.

16 THE COURT: Where is this in Dr. Stevick's report?

17 MR. HARKINS: Now, Your Honor, we don't -- why
18 would we issue a test about beds we didn't accuse of
19 infringing? We are not supposed to do that. We only talk
20 about those beds --

21 THE COURT: He does not make any comparison to that
22 at all. He makes a comparison to the fact that if air
23 escapes in any way --

24 MR. HARKINS: Right.

25 THE COURT: -- by virtue of the fact that there is

1 any difference in the manometer reading, then it means that
2 air escapes. I have lots of problems with that.

3 MR. HARKINS: That is, in fact -- there are other
4 beds that don't have that ring around them, and they don't
5 have the air trapped in.

6 THE COURT: I'm not worried about other beds. What
7 other beds are in issue here? What other beds in his
8 report?

9 MR. HARKINS: The only beds that are in his report
10 are the ones that tested positive for the suction, and
11 that's what we ended up accusing of infringement. If we
12 didn't find infringement, they weren't in our -- we are not
13 accusing them, so we didn't do a report on those because
14 that would be --

15 THE COURT: You're saying -- the problem I have
16 here is the question of the major issue in this case is that
17 any change in pressure, Boyle's law is thrown out the
18 window. That's what got my curiosity up.

19 MR. HARKINS: Okay. So if Your Honor would allow
20 me, I just want to -- before we -- Boyle's law is the
21 concept that you're going to increase pressure in it by --
22 that you will increase pressure in a space. That can
23 happen. Now, what this test showed was actually a multi- --
24 this showed several things. So what happens is --

25 THE COURT: Let's go look at the test. You've got

1 it here. Show it.

2 MR. HARKINS: Can I just explain on the picture,
3 and then if we want to look at something. I don't have the
4 video in front of me.

5 THE COURT: That's all right. Show me whatever you
6 want.

7 MR. HARKINS: So what happens is, in the manometer,
8 this isn't -- the point of this is, this tube that's
9 connected to the manometer has fluid on two sides of it,
10 okay. And what it will show is that this idea of the
11 pressure reading is, if air is being pushed through the
12 tube, it will make the left side go down and the right side
13 go up. That shows -- that's a pressure reading, but what it
14 shows is air is being pushed through the tube. That's how
15 the manometer works.

16 So when we place the -- when Dr. Stevick placed the
17 weight on these beds that are accused, what happened is at
18 first the pressure -- the air was going through the tube,
19 and the pressure went up. But air was also then being
20 pushed out of the bed. And what he found is then what
21 happens is the pressure -- you can see in the video that
22 you're talking about that the fluid doesn't stay low. If
23 under Boyle's law, if the air didn't escape, once that
24 pressure -- once that fluid in the manometer on the left
25 side went down, it would stay down because you would have a

1 constant high pressure, according to Boyle's law.

2 But because air escapes, that fluid in the tube
3 goes back up again after a short period of time. If there
4 was no air escaping, the fluid in the tube would not go back
5 up, it would be trapped in that zone, and the fluid would
6 stay showing a high pressure zone. That is not -- that's
7 why instead of just going like this (indicating), this
8 surface being down, it actually goes down and up, and you
9 see that. You see it goes down, and then it bounces back.

10 That bounceback only happens when air has escaped
11 because Boyle's law would say that, no, it should stay low,
12 but it doesn't stay low, it goes up a little bit again, and
13 the only reason under Boyle's law that would happen is the
14 pressure has been released from under the bed a little bit
15 because it got pushed out around that ring.

16 This is a balloon, so there is not much force that
17 it requires for the air to push out around the sides. If it
18 was a cement block, Boyle's law would hold, it would just
19 stay low, but this is a balloon.

20 THE COURT: So there is no friction on the bottom
21 of this bed?

22 MR. HARKINS: There is a little bit of friction on
23 the bottom of the bed, but that becomes overcome by the
24 weight of a person placed on the bed.

25 THE COURT: It becomes overcome because it doesn't

1 take any question of force, it's a question of any change,
2 is what you're saying?

3 MR. HARKINS: What I'm saying is that there is a
4 detectable -- there is going to be -- actually, there is
5 quite a bit, because you put the weight on there, there is a
6 detectable change in the force, and then there's a
7 bounceback as the air escapes. That air escaping, that
8 bounceback is air being removed from the cavity, which is
9 the definition of suction.

10 THE COURT: So that the bed would go down, and how
11 about, is there any measurement whatsoever of the amount of
12 air that escaped?

13 MR. HARKINS: That is not in the claim, so that we
14 didn't do a measurement of how much air because that's not
15 in the claim. See, what you're talking about is, if there
16 is a cross-examination question about how good is this test,
17 that's fine. But does this test show air escaping?

18 Absolutely shows air escaping from that chamber,
19 which is the definition of suction. This is a test that's
20 supposed to show suction, and it does. Everything I'm
21 hearing today from Mr. Thomas is about, well, we think it's
22 sort of a weak showing. It shows it, but it's a weak
23 showing. Well, that's a cross-examination question.

24 THE COURT: You're saying it doesn't make any
25 difference about any force necessary to push air out, it's

1 any force pushes the air out, correct?

2 MR. HARKINS: The actual key is, Your Honor, it's a
3 two part. It's that you have pressure built up and
4 released, and that release is air escaping from the cavity.
5 That's the definition of suction. It's you build the
6 pressure up, and then some of it gets released.

7 THE COURT: Well, it doesn't make any difference
8 how much suction it is. The suction may not be sufficient
9 to suck it.

10 MR. HARKINS: Well, there is some suction
11 happening, which means there is some amount that it is
12 fixing.

13 THE COURT: Yeah, but the problem is, it still has
14 to keep the mattress from moving, doesn't it?

15 MR. HARKINS: Again, under Your Honor's order,
16 there is no amount that that has to happen because the claim
17 doesn't require an amount. So if -- the whole point, if you
18 look at the claim language, it says there is suction that
19 has occurred to fix the bed to the space, to the floor, to
20 some extent. It doesn't say how much. There isn't a
21 quantification.

22 We just had to show, yeah -- yes, we can show that
23 a suction has happened. This test shows that suction
24 happens.

25 THE COURT: Well, it doesn't make any difference

1 how much suction it is, just so there is some suction?

2 MR. HARKINS: That's what the claim says. It
3 doesn't matter, there is no quantification in the claim
4 about how much suction has to happen, but you have to show
5 that it does exist. He did a test where you can see that it
6 happens.

7 THE COURT: Well, it doesn't have to have enough
8 suction to do anything. I thought that the claim said
9 something about -- let me make sure.

10 MR. HARKINS: Yeah, it does say that the bed acts
11 as a suction cup thereby fixing the bed relative to the
12 support surface.

13 THE COURT: So not the question of suction, it's a
14 question of the suction cup, right, claim number 1?

15 MR. HARKINS: This is a cup shape, as Your Honor
16 noted. There is air trapped -- you know, there is air that
17 is held under this outer ring that's in the middle. So that
18 part about the cup exists. The suction -- so it is a cup.
19 In the test when it goes -- when the fluid goes down, but
20 then it bounces back a little bit, that bounceback is the
21 definition of suction, that air is removed from a space,
22 that is the definition of suction. So the test shows
23 suction.

24 THE COURT: It's not just suction. It says so that
25 said bed acts as a suction cup. The bed has to act as a

1 suction cup.

2 MR. HARKINS: But that is what the test shows.

3 This bed --

4 THE COURT: No, the test shows that there must be
5 some suction.

6 MR. HARKINS: From the bed.

7 THE COURT: The question is, the claim number 1 is
8 specific, says, "So that said bed acts as a suction cup."

9 MR. HARKINS: Right. So the bed is a cup. We can
10 see the cup shape on slide 15.

11 THE COURT: The bed itself has to act as a suction
12 cup.

13 MR. HARKINS: And that's what the test shows, Your
14 Honor. That's exactly.

15 THE COURT: You say that's what it shows, and
16 that's what Stevick says it shows. I have lots of problems
17 with it. I'm not going to rule on this today. I'm just
18 going to put it off.

19 I think what I'll probably want to do is to go over
20 Stevick himself and hear what he has to say because I'm
21 beginning to worry about what everyone claims is being said.
22 Stevick is a doctor of mechanical engineering, correct?

23 MR. HARKINS: He did -- he has a Ph.D. in
24 mechanical engineering. He ran a test that shows --

25 THE COURT: I understand that, and as such he's

1 saying that this bed -- he didn't say this bed. He just
2 says it acts as a suction. Now, I'll deal with that later.
3 But I'm not going to rule on this question today because I
4 have a problem with overruling the Magistrate Judge, if I
5 were to overrule him. And I'm not about to overrule him
6 without a thorough understanding of what I'm doing. I'm
7 getting mixed messages by virtue of this.

8 So what I'm going to do is not rule on that. I'm
9 going to put it aside for the time being. I think as we get
10 along -- we've got plenty of time -- I certainly can hear
11 from Stevick. He's more than available. I've been very
12 generous, in somehow or another, I just don't seem to be
13 able to hear witnesses or anything else in these type of
14 cases by virtue of the pandemic, but there is no question
15 that we could get him on zoom without any problem. At least
16 we got you all on zoom, so I assume it won't be any problem
17 getting him on zoom. But I'm just not dealing with it
18 anymore.

19 We will go to the second portion of this thing,
20 okay.

21 MR. HARKINS: Thank you, Your Honor. The only
22 other thing I'd say is that if there is a dispute about how
23 good the evidence is --

24 THE COURT: Stop. May I finish?

25 MR. HARKINS: Thank you, Your Honor.

1 THE COURT: I don't want to hear from you. I will
2 hear -- because I'm not interrupting you, I don't want to do
3 that. What I want to do is, I'm not ruling at this time on
4 whether to overrule the Magistrate Judge or not. I have
5 tremendous misgivings about the entire matter, and I would
6 like to find out where, and the pictures you show there show
7 a person on the entire mattress.

8 So far there is nothing in the report of
9 Dr. Stevick showing how wide, how big, or where the weight
10 was that's put down, or what its effect would be other than
11 the fact that there was a change in pressure, no matter how
12 small, which thereby indicates what, according to
13 Dr. Stevick, creates a vacuum, and that's where we really
14 are in that matter.

15 I'm very concerned because where that weight is may
16 have some bearing, and, of course, if I accept Dr. Stevick's
17 testimony, and I may have to, and you're right, I may have
18 to, and if I do, I will. But the problem is, is I have
19 misgivings about it, but we will see where we go from there.

20 Okay. Let's go to the second situation about you
21 want to cure Dr. Stevick's testimony, correct?

22 MR. HARKINS: Thank you, Your Honor. On this
23 one -- when you say cure his testimony, his testimony was
24 that the prior art shows coils. We just want to update that
25 based on the Court's claim construction.

1 THE COURT: I never saw a proffer. You just want
2 to change the thing and you didn't proffer what the change
3 would be. You're sitting there, and the problem I have is,
4 all of this was long involved, but that's neither here nor
5 there, something that I think you could have anticipated by
6 virtue of the fact that it was creating a problem
7 themselves. I worry about it, but I'll be glad to hear you.

8 MR. HARKINS: Okay. Thank you, Your Honor. So.

9 THE COURT: 10 minutes, is that what you need?

10 MR. HARKINS: That should be plenty of time, Your
11 Honor. Thank you.

12 THE COURT: Okay. Go ahead.

13 MR. HARKINS: Okay. So this is just a matter
14 of the Court has entered a new construction of coil, and
15 nobody, no expert has addressed that definition of coil that
16 the Court entered. So we just want to be able to make sure
17 that we conform with the new claim construction by saying
18 here is -- yes.

19 THE COURT: That's not what you said. What you
20 said is you want to file a new report; isn't that correct?

21 MR. HARKINS: No, Your Honor. We asked to
22 supplement the report to show that --

23 THE COURT: That isn't new?

24 MR. HARKINS: Supplement to address the definition.

25 THE COURT: Supplement is nothing new, correct?

1 MR. HARKINS: It's something that's additional.
2 It's not changing what he said.

3 THE COURT: All right. Now, that would require the
4 other side to be able to supplement their report, correct?

5 MR. HARKINS: Yes, Your Honor. I think no expert
6 has used --

7 THE COURT: So why don't I just eliminate the
8 definition I have, and we will go on from there? I'm not
9 about to start -- we've got 160 some docket entries already
10 in this case. The only reason the case was continued, not
11 tried today -- I wish it were tried -- was by virtue of the
12 problems of the pandemic. But other than that, I would have
13 tried it.

14 Then I tried to get the case as fast as I could and
15 couldn't get a date from counsel that was any closer than
16 that which we have at the present time, which is a long way
17 away. It doesn't have anything to do with the Court. It
18 has to do with counsel not being able to have a date that
19 was agreeable to both counsel.

20 So the question keeps coming back that this case
21 keeps going on and on, and, frankly, I have a problem with
22 the case going on and on and on. The truth is that there is
23 a problem with Stevick's testimony. Everyone knows that,
24 and to cure that, you file a supplemental report, correct?

25 MR. HARKINS: No. Dr. Stevick has already said

1 that the prior art shows a coil. We just want to address
2 the exact language that the Court put in there as to what
3 the coil requires.

4 THE COURT: I just defined coil.

5 MR. HARKINS: That's all we want to address.

6 THE COURT: I merely defined coil, and that's all.
7 I'm not -- I didn't do anything further than that. That's
8 what worries me. I'm not about to start this case over
9 after 160 docket entries already in this case. I'm just not
10 about to, unless you give me very good reason. So far all
11 you say is because of this definition, we want to re-define
12 what we said before, and you didn't proffer what you want to
13 re-define and how to redefine it.

14 MR. HARKINS: I think that, Your Honor, that's
15 perfectly reasonable. Rather than address this in this
16 setting, why don't we proffer what we have in mind.

17 THE COURT: You never have proffered it.

18 MR. HARKINS: No, I'm saying we were asking
19 permission.

20 THE COURT: I already told you that, and,
21 unfortunately, I'm not about to re-open this case. I'm just
22 not about to.

23 MR. HARKINS: Okay, Your Honor.

24 THE COURT: The case should have been tried today.
25 I wish I was able to try it, but the pandemic prevented

1 that. And if it was tried today, you would have never
2 gotten it in. The problem really is what was in the record
3 that would be indicative of this case, and I could go into
4 it and will go into it. I think your point, I understand
5 your point, is you want to add something to Dr. Stevick's
6 report.

7 Unfortunately, I'm not going to start discovery all
8 over again. I'm just not going to. Nor am I going to get
9 into conflicting arguments about what's there. I want to
10 try this case just as if we were going to try it today. It
11 was supposed to be tried today. I wish it were. If it were
12 tried, everything would be fine.

13 The problem is, is it isn't tried today, so we will
14 go ahead and try it. Insofar as a ruling on that, I'm not
15 going to allow a new report, period. I am going to defer
16 ruling on the question of -- I think that Dr. Stevick's
17 testimony probably will be admissible, but I want to check
18 that out because the question of what is scientific evidence
19 always gets to me. So I want to probably have a hearing on
20 Dr. Stevick himself to make sure that I don't make a mistake
21 about allowing his testimony.

22 Okay. And that's going to take care of this matter
23 right now. I'm not ruling on the question of whether
24 Stevick is or is not or whether to overrule Judge Leonard.
25 I hesitate to overrule him. But I am concerned about -- he

1 did say he is subject to cross-examination. Might end up
2 being a jury question. I'm afraid it might.

3 Insofar as reopening the case and allowing him to
4 file a brand-new report, call it a supplemental report, and
5 it is supplemental anything. I don't see where it hurt any.
6 I think in the past there were many references that allude
7 to what the question of what a coil is and what is in that
8 particular bed.

9 So, frankly, there is no need to get to -- I've
10 read all of the material. I think there is nothing being
11 offered that isn't in and hasn't been presented in the
12 arguments that have been sent forward here.

13 Is there anything different you want to say that's
14 not contained in your memoranda? I'll be glad to hear it.
15 And I won't be glad to hear it, but I will hear it.

16 MR. HARKINS: No, Your Honor. I mean, we had in
17 mind something like just five pages of explaining that the
18 Court said this about coil, and so we just wanted to be
19 clear about the claim. That was it. I understand what Your
20 Honor is saying.

21 THE COURT: I'm just not about to re-open this case
22 and start from scratch. I'm just not going to.

23 MR. HARKINS: We had no intention of doing that,
24 Your Honor. Our point was just to take what's already in
25 the case and just say the Court has -- a lot of courts have

1 done this. Sometimes it's in the local rules. Our point
2 was under the circumstance where there's new construction,
3 it makes sense for the experts to address that because none
4 of the three experts used the construction that Your Honor
5 entered. It was all a little bit different, but I hear what
6 Your Honor is saying.

7 THE COURT: What I'm saying is it's my decision,
8 not the expert's decision. Certainly determine because I
9 decided the situation based on what was in the record, not
10 what wasn't in the record. I'll go over that thoroughly.
11 But the fact of the matter is I'm not about to re-open this
12 case and start from scratch. Got 160 entries on the docket.
13 It has been squeezed to the nth degree, and I can understand
14 that.

15 I can understand why there would be so many motions
16 and so many arguments. It doesn't make sense in this case
17 because there are certain problems in the case, and everyone
18 seems to have said the heck with the problems, let's keep
19 going.

20 I do think the jury will arrive at an appropriate
21 conclusion in the case. I do think that after the testimony
22 and any questions that the Court or counsel may have could
23 be answered. But I'm not about to do it without hearing
24 from Dr. Stevick.

25 I have problems with that. So, consequently, I

1 thank you gentlemen. The problem is that this case has been
2 expanded beyond that which any case of like nature has ever
3 gotten to. It's being expanded, and, unfortunately, we
4 continued the case. God knows I wish there were no
5 pandemic, then we could have tried it today. More than
6 anything I wish we could have tried it today, gotten a jury
7 and gotten the matter over.

8 It does not seem to be anything upon which you all
9 could agree on anyhow. That's not to say one side or the
10 other is doing anything they shouldn't do. They should
11 fight this case tooth and nail, and you're doing it. So the
12 question is, I'm not going to re-open the case, start a new
13 fight all over again. I'm just not going to.

14 So, consequently, the motion to supplement
15 Dr. Stevick's report is denied. Motion in relation to
16 overrule Judge Leonard's opinion, at the present time I'll
17 just wait. I would like to see what Dr. Stevick says about
18 this situation because I'm not sure about the testing that
19 was done and where and how weights were applied and what the
20 facts would be, according to him. I'm not asking somebody
21 else to do it. I'm just going to see what he has to say as
22 to whether or not it's a scientific certainty. That's what
23 the whole problem is.

24 When we deal with scientific certainties, it never
25 seems to be any problems. Science is not perfect, in my

1 mind, but the rulings may be subject to some problems if
2 they are subject. Here I worry about the test itself, but
3 we'll see much before I will rule on whether -- I would tend
4 to keep what Judge Leonard has ruled in effect. I would
5 tend to allow him to testify, but I may limit such testimony
6 in relation to certain problems that I see in the case.

7 The problems I see are simple, and they may be
8 curable by certain testimony that if I inquire of
9 Dr. Stevick. But that will be up to you all if you want to
10 present him or not. Just have to rely on what we got. But
11 I may then make rulings concerning that shortly before the
12 trial. I'm not about to overrule Judge Leonard at this
13 time, and probably won't do it later on. The question was
14 whether Dr. Stevick's testimony was or was not admissible.
15 Judge Leonard said it's subject to cross-examination. At
16 least we will see it's subject to cross-examination and the
17 circumstance, but you'll hear from me in a couple of days.
18 I'll get an order out very shortly. I am concerned about
19 Stevick, but I'll get an order out.

20 Under no circumstance are we going to have any
21 supplemental expert opinions introduced at this time, I can
22 assure you of that.

23 Okay. Thank you, gentlemen, for coming. We will
24 see what we deal. If you want a hearing on that, I'll ask
25 the defendant if he wants to present Stevick. If he does or

1 does not, that's up to him. I'll let him do what he
2 desires. But I can tell you this, under any circumstances
3 at the trial, if Dr. Stevick is going to testify, I may at
4 that time review the ruling. That may be the best thing to
5 do. Then we will just have it by testimony.

6 I just find the 160 entries, docket sheet just --
7 it's already wild in this case. Not going to go into a new
8 report. As long as I can sufficiently define what may be
9 subject to cross-examination, I may let Stevick come right
10 in and testify and then be cross-examined before the jury,
11 but we will see.

12 Right now I'm just going to wait and think about
13 it. I've had such a problem with any testimony before,
14 never had such a problem in the many years. Unfortunately,
15 I think I worry that we are getting into a problem on the
16 central issue in the case. That worries me. I'm not about
17 to say that that's a preliminary hearing, but it worries me.
18 In any event, thank you, gentlemen.

19 MR. THOMAS: Your Honor, this is Warren Thomas.

20 THE COURT: Yes.

21 MR. THOMAS: I did not -- you didn't -- you moved
22 onto the second issue before I had an opportunity to rebut.
23 I just wondered if you might give me a minute to respond,
24 and understanding that I take your point that you're not
25 inclined to overrule the magistrate's order at this time,

1 but something to just leave you with, if I might.

2 THE COURT: What do you want to say, Mr. Thomas?
3 Go ahead.

4 MR. THOMAS: Thank you, Your Honor. Very briefly,
5 just like to remind the Court that it is TWW's burden to
6 show that Stevick's testimony is based on the reliable
7 principles and methods. And you made the comment a few
8 minutes ago about sort of worrying about or thinking about
9 what's in the record, and you're not going to consider
10 what's not in the record.

11 Mr. Harkins' explanation about why the air flows in
12 and out, and that that video that it appears that you did
13 watch of the manometer reading and how the fluid in the
14 gauge goes up and down, Mr. Harkins' explanation is just
15 new. Dr. Stevick never explained that. It's nowhere in his
16 two reports, not in his deposition testimony explanation of
17 what he was doing.

18 TWW didn't try to supplement the record or give a
19 new declaration from Dr. Stevick in opposition to our motion
20 to exclude, and so certainly Magistrate Judge Leonard could
21 have had a hearing on it. If you were taking up the motion,
22 we understand you may want to hear from Dr. Stevick. But I
23 do think it's important to just note that that's a new
24 argument that has never been presented before, whether in
25 factual testimony, opinion testimony, or even in argument.

1 The same thing goes with Mr. Harkins' definition of
2 suction. He says air is escaping out, is the definition of
3 a suction. That's new and think it's a little bit of an
4 oversimplification. But, in any case, I think that's
5 something that the Court may want to consider as well, that
6 that information is new.

7 So but we appreciate your time today and understand
8 your thoughts on this.

9 THE COURT: Let me hear from Mr. Harkins on that.

10 MR. HARKINS: Well, Your Honor, it's not new. We
11 submitted with the slide testimony from Dr. Stevick from his
12 deposition talking about it, and you have seen the video.
13 The video is in evidence that shows the rising and falling
14 of the manometer.

15 THE COURT: The video does show that the pressure
16 fluctuates and any fluctuation in pressure, according to
17 Dr. Stevick, is the question of airflow. And he says, in
18 essence, that Boyle's law doesn't apply. So we will go
19 there.

20 I'm afraid you may be right, Mr. Harkins. The
21 problem we get back is the age old problem I have of
22 experts. Drive you up a wall because experts believe
23 thoroughly in what they're testifying to generally. So we
24 will see what happens.

25 In any event, I'm not allowing a supplemental

1 expert report, period. That's the end of that. Otherwise,
2 we will start discovery all over again, and I'm not going
3 into that.

4 Insofar as the question, I haven't heard anything
5 new other than what's submitted. Of course, I do realize
6 that Mr. Harkins indicates that the manometer indicates a
7 change of some kind, and on the testimony of Dr. Stevick, he
8 says that any change in temperature means that air escaped
9 and air returns, period, any change.

10 Well, probably will be subject to
11 cross-examination, I think. The more I think about it, the
12 more I think Mr. Harkins may have a good point that the
13 Magistrate Judge has already ruled upon it. So we will see.
14 My view is that I was going to hold it in abeyance, but
15 better I should not. May be a question of adopting certain
16 portions of what Magistrate Judge Leonard has ruled. To the
17 extent that he may be ruling on a matter that decides the
18 case, then in that case I will look at it. I'm not about to
19 get into that.

20 So the question is that it deals mostly with claim
21 1, TWW, which differs so slightly from what Dr. Stevick has
22 testified to. Dr. Stevick says any movement of the pressure
23 gauge indicates that air has flown out and flown back in,
24 creates a suction cup. But claim number 1 can differ in
25 that. I'll go back to the claim. It's got to prove -- be a

1 suction bed. So we probably will see where we are.

2 Thank you, gentlemen. Is there anything else
3 anybody wants to say before I leave?

4 MR. THOMAS: Nothing from Coleman. Thank you, Your
5 Honor.

6 MR. HARKINS: Not from Team Worldwide. Thank you.

7 THE COURT: Anything else from anybody? In which
8 case we will adjourn at this time.

9 MR. LACY: Thank you, Your Honor.

10 MR. HAMILTON: Thank you, Your Honor.

11 (Hearing adjourned at 11:02 a.m.)

12 CERTIFICATION

13
14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

16
17
18 X _____/s/ _____x

19 Jody A. Stewart

20 X _____4-5-2022 _____x

21 Date

22

23

24

25